

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LEVI BATTLE, III]	
Petitioner,]	
]	
v.]	No. 3:11-0474
]	Judge Campbell
JERRY LESTER]	
Respondent.]	

O R D E R

On June 16, 2011, an order (Docket Entry No.14) was entered dismissing the instant *pro se* § 2254 habeas corpus action as untimely.

Since the entry of this order, the petitioner has filed a Motion (Docket Entry No.19) to reconsider the dismissal and a Notice of Appeal (Docket Entry No.18).

The Motion to reconsider does not question the Court's calculation of the limitation period applicable to petitioner's habeas corpus petition. Rather, the Motion simply asks the Court to recognize the equitable tolling of the limitation period. The petitioner, however, has offered nothing to suggest that equitable tolling would be appropriate in this instance. Accordingly, petitioner's Motion to reconsider is DENIED.

When a Notice of Appeal is filed in a § 2254 habeas corpus action, the district court is obliged to determine the petitioner's

liability for the appellate filing fee and to ascertain whether it would be appropriate to grant the petitioner a certificate of appealability.

In the order of dismissal, the Court has already determined that a certificate of appealability should not issue in this instance. However, the petitioner has yet to either pay the fee required for the filing of his appeal or submit an application to proceed on appeal in forma pauperis.

Therefore, the petitioner has thirty (30) days from the date of entry of this order on the docket in which to submit to the Clerk of this Court either the appellate filing fee of four hundred fifty five dollars (\$455) or an application to proceed on appeal in forma pauperis.

The Clerk is directed to forward a copy of this order to the Clerk of the Court of Appeals.

It is so ORDERED.



Todd Campbell
United States District Judge